

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

DRAKE A. EDWARDS,

Plaintiff, : Case No. 3:08-cv-157

-vs- : District Judge Thomas M. Rose  
DAYTON VETERANS MEDICAL Chief Magistrate Judge Michael R. Merz

CENTER, et al.,

Defendants.

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**REPORT AND RECOMMENDATIONS**

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This case is before the Court on Plaintiff's Application for Leave to Proceed *in forma pauperis*. That Application should be denied because the Complaint makes allegations against Veterans Administration Officer Keller which are already pending in this Court in Case No. 3:08-cv-075 that are the same as the allegations in this case, to wit, that Officer Keller pushed the Plaintiff on March 3, 2008, trying to start a fight. A co-defendant, Officer Albeman, has been dismissed from the older case because the Complaint contained no allegations against him. However, process has not yet been served in the prior case.

When a Complaint is already pending pleading the same cause of action, a second case is plainly frivolous. Therefore the Application to Proceed *in forma pauperis* should be denied.

May 5, 2008.

s/ **Michael R. Merz**  
Chief United States Magistrate Judge

## **NOTICE REGARDING OBJECTIONS**

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within ten days after being served with this Report and Recommendations. Pursuant to Fed. R. Civ. P. 6(e), this period is automatically extended to thirteen days (excluding intervening Saturdays, Sundays, and legal holidays) because this Report is being served by one of the methods of service listed in Fed. R. Civ. P. 5(b)(2)(B), (C), or (D) and may be extended further by the Court on timely motion for an extension. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendations are based in whole or in part upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within ten days after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See United States v. Walters*, 638 F. 2d 947 (6<sup>th</sup> Cir., 1981); *Thomas v. Arn*, 474 U.S. 140, 106 S. Ct. 466, 88 L. Ed. 2d 435 (1985).